
(2013) 08 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17358 of 2013

N. Malla Reddy

APPELLANT

Vs

State of A.P. and Four Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 2, 31, 31(1), 31(1)(a), 31(1)(b)
Constitution of India, 1950 — Article 226(3)

Citation : (2013) 6 ALD 247 : (2013) 5 ALT 713

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for Sri V. Ramachander Goud, for the Appellant;

Judgement

Ramesh Ranganathan, J.—This case has had a chequered history. The petitioner has invoked the jurisdiction of this Court, by way of the present Writ Petition, for the fourth time in a span of two months. Facts, to the extent necessary, are that on 14.03.2013 the petitioner's A-4 shop was inspected at 11.00 A.M. in the presence of the petitioner and two others; the officers found 11 boxes of IML liquor kept on one side of the shop and, on verification, found 48 bottles of 180 ml. in each box; on examination they found that all the excise adhesive labels (EALs) thereon were fake; and their enquiry revealed that the petitioner, along with his partner, had entered into an agreement with one Sri Venkateswarlu for supply of the said non-duty paid liquor. The petitioner's license was suspended pending enquiry on 15.03.2013 and a case, in COR No. 683/2012-13, was registered by the Station House Officer, Medchal for offences u/s 34(a) and Sections 36(b) & (c) of the A.P. Excise Act, 1968 (hereinafter called the "Act") on the same day. The show cause notice dated 15.03.2013, for cancellation of the petitioner's A-4 shop license, was served on the nowkarnama of the petitioner, on 18.03.2013 granting a week's time for the petitioner to submit his reply thereto; and, on the ground that no reply was submitted by the petitioner to the show cause notice, an order of cancellation was passed on 26.03.2013.

Aggrieved thereby the petitioner invoked the jurisdiction of this Court, and filed W.P. No. 11227 of 2013. During the pendency of the said Writ Petition wherein, among other grounds, he disputed the allegation of non-duty paid liquor being found in his premises, the petitioner also preferred a statutory appeal against the order of cancellation dated 26.03.2013. In its order, in W.P. No. 11227 of 2013 dated 22.04.2013, this Court noted that the petitioner was willing for compounding of the offence u/s 47 of the Act; and he had placed reliance on a Division Bench judgment of this Court in V. Sreenivasa Reddy Vs. Commissioner of Excise, Government of A.P. Hyd. and Another, wherein it was held that the power of compounding the offence was conferred on the authorities, including the Commissioner, to facilitate the license holder to conduct their business so that they do not sustain loss due to closure of their business. This Court also noted the submission of the Learned Government Pleader for Prohibition & Excise that, even though Section 47 included Section 31(a) & (b) of the Act, a fair amount of discretion vested in the 2nd respondent whether or not to accept compounding; and, having regard to the gravity of the act indulged in by the petitioner, this was not a compoundable offence. The Writ Petition was disposed of holding that the question whether the petitioner was entitled for compounding of the offence, u/s 47 of the Act read with the A.P. Excise (Compounding of offences) Rules, 1973 (hereinafter called the "Compounding Rules"), did not arise for consideration at that stage and, as the petitioner had already made a request in the pending appeal for compounding of the offence, interest of justice would be served if the 4th respondent was directed to consider the petitioner's request for compounding the offence in terms of Section 47 of the Act read with the compounding Rules and in the light of the Division Bench judgment. The 4th respondent was directed to give an opportunity of being heard to the petitioner, and take an appropriate decision on this aspect within ten days of receipt of a copy of the order.

2. The petitioner filed an application for compounding the offence u/s 47 of the Act. By his proceedings dated 03.05.2013, the 4th respondent held that the contraband seized was 11 cartons of whisky which was non-duty paid liquor; seizure of non-duty paid liquor, from the licenced premises, clearly established that the appellant-licensee had intentionally indulged in sale of non-duty paid liquor flouting the Rules and the conditions governing the license; this activity, if allowed, would not only erode government revenue but would also put the health of consumers at risk since the liquor was illegally manufactured and supplied; and, in the greater interest of government revenue and in public health, he deemed it fit not to grant the relief sought for, and was upholding the order of the Prohibition & Excise Superintendent, Medchal cancelling the shop license. The petitioner's appeal was, accordingly, dismissed.

3. Aggrieved thereby, the petitioner filed W.P. No. 14205 of 2013 questioning the validity of the order of cancellation dated 26.03.2013 as confirmed in appeal by the order of the 4th respondent dated 03.05.2013. This Court, in its order dated 08.05.2013, observed that Section 47 of the Act stipulated the manner in which

the authority was required to pass orders in lieu of cancellation etc; and the impugned order was not sustainable. The impugned order dated 03.05.2013 was set aside and the matter was remitted for the reconsideration of the 4th respondent who was directed to give notice to the petitioner, hear and decide the matter, and pass appropriate orders in terms of the directions of this Court and Section 47 of the Act, preferably within a week from the date of the order.

4. In his order dated 13.05.2013 the 4th respondent, after referring to the orders passed by this Court in W.P. Nos. 11227 and 14205 of 2013, the provisions of Section 47 of the Act and Rule 3 of the Compounding Rules, held that the relief, sought for compounding the offences u/s 47 of the Act, had been examined carefully; a fair reading of the provisions relating to compounding of offences, under the Act and the Rules, showed that he was not empowered to compound the offence; in view of the clear legal position, he was unable to exercise power not vested in him; and the appeal was being disposed of granting liberty to the petitioner to approach the competent authority for the relief sought for regarding compounding of the offences. While disposing of the appeal, the 4th respondent merely dealt with the petitioner's request for compounding the offence u/s 47 of the Act, and not the validity of the order of cancellation dated 26.03.2013.

5. Aggrieved by the order passed by the 4th respondent dated 13.05.2013, the petitioner again invoked the jurisdiction of this Court. In its order in W.P. No. 14997 of 2013 dated 22.05.2013 this Court, while noting the submission of the Learned Government Pleader for Prohibition & Excise that it was the Commissioner of Excise who was the competent authority to take an appropriate decision on the appeal filed by the petitioner, set aside the impugned order dated 13.05.2013 and directed the Commissioner of Prohibition & Excise to take an appropriate decision on the appeal filed by the petitioner, strictly in accordance with Section 47 of the Act, within one week of receipt of a copy of the order.

6. The 2nd respondent, by his proceedings dated 03.06.2013, rejected the petitioner's request for compounding of the offences u/s 47 of the Act holding that the case pertained to Cr. No. 683 of 2012-13, u/s 36(b) &(c) and Section 34(a) of the Act, of the Excise Station Medchal; both Sections 34(a) and 36(b) & (c) were non-compoundable as per Section 47 of the Act; the license of the shop was cancelled on 26.03.2013 vide Cr. No. E5/360/2013; in view of the law laid down in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, the offence u/s 36(c) was not a compoundable offence; once the license was cancelled, there was no power to compound the offence; only trivial offences were compoundable before cancellation or suspension of the license; the contraband of 11 carton bottles was illegal, and had not been routed through known manufacturers or APBCL; in the present case, in addition to the loss of revenue, there was the possibility of public health being jeopardized; and, therefore, the application for compounding the case was being rejected. Aggrieved thereby the present Writ Petition.

7. This Court, by its order in W.P.M.P. No. 21085 of 2013 in W.P. No. 17358 of 2013 dated 19.06.2013, noted the submission of the both Learned Senior Counsel appearing on behalf of the petitioner on the scope of Section 47 of the Act and the Learned Government Pleader for Prohibition & Excise that evasion of excise duty, being a serious offence, did not fall u/s 47 of the Act. This Court was, prima facie, of the view that the phrase "any duty" in Section 31(1)(a) of the Act comprehended excise duty as well; and, as long as the violation was made compoundable u/s 47 of the Act, the 2nd respondent had no option but to accept the licensee's request for compounding such a violation. As the new Excise year was to commence from 01.07.2013, the 2nd respondent was directed to receive the maximum compounding fee of Rs. 1,00,000/- from the petitioner towards the alleged violation of being in possession of non-duty paid liquor. The 5th respondent was directed, on the petitioner making such payment, to renew his license for the excise year 2013-14 which was to be subject to further orders. Time was granted to the respondents to file a counter affidavit.

8. Aggrieved by the said interim order dated 19.06.2013, the respondents preferred W.A. No. 1010 of 2013 and a Division Bench of this Court passed the following order on 07.08.2013:-

Learned Counsel for the appellants states that he wants to withdraw the Writ appeal in order to file vacate petition.

Permission is accorded.

Accordingly, the Writ Appeal is dismissed as withdrawn leaving it open to the appellants to avail the remedies available under law.

Miscellaneous petitions pending consideration, if any, shall stand closed.

9. The duty paid liquor, available at the petitioner-A4 shop, was seized on 30.06.2013. The petitioner filed C.C. No. 1151 of 2013 alleging violation of the aforementioned interim order dated 19.06.2013. The 2nd respondent filed W.V.M.P. No. 2462 of 2013 on 08.08.2013 seeking vacation of the interim order passed in W.P.M.P. No. 21085 of 2013 in W.P. No. 17358 of 2013 dated 19.06.2013.

10. Initially Sri K. Ramakrishna Reddy, Learned Senior Counsel, raised an objection to the maintainability of the vacate stay petition contending that an elaborate order was passed after hearing both the Counsel for the petitioner and the Learned Government Pleader in conformity with Article 226(3) of the Constitution and Rule 9 of the Writ Proceeding Rules; and the interim order had attained finality having been confirmed by the Division Bench in W.A. No. 1010 of 2013 dated 07.08.2013. Learned Government Pleader for Prohibition & Excise, on the other hand, drew attention of this Court to the interim order passed on 19.06.2013 to submit that this Court had granted time to the respondents to file a counter-affidavit and, as the interim order was passed before a counter-affidavit was filed by the respondent, a vacate stay petition could be filed

notwithstanding an appeal having been preferred against the said interlocutory order, more so as permission was accorded for withdrawal of the Writ Appeal and for a vacate petition to be filed in accordance with law.

11. It may not be necessary for this Court to examine the question, whether or not a vacate stay petition is maintainable, as both Sri K. Ramakrishna Reddy, Learned Senior Counsel appearing on behalf of the petitioner and the Learned Government Pleader for Prohibition & Excise would agree that the Writ Petition could itself be finally disposed of. It would suffice, therefore, for this Court to consider the submission made by the Counsel on either side on the validity or otherwise of the impugned order of cancellation dated 26.03.2013 as confirmed by the order of the 2nd respondent dated 02.06.2013.

12. Sri K. Ramakrishna Reddy, Learned Senior Counsel, would submit that service of a copy of the show cause notice on the nowkarnama, does not amount to service of notice on the license holder; the stipulation of seven days, as the period within which an explanation was required to be submitted by the petitioner to the show cause notice, is contrary to law; the impugned order of cancellation was passed even without a copy of the show cause notice being served on the petitioner; in view of Rule 5(1) of the Compounding Rules, atleast 15 days prior notice must be given to the licensee before an order of cancellation is passed u/s 31(1) of the Act; in the present case, while a copy of the show-cause notice dated 15.03.2013 was served on the petitioner's Nowkarnama on 18.03.2013, the order of cancellation was passed within 8 days thereafter on 26.03.2013; the petitioner has repeatedly challenged the order of cancellation dated 26.03.2013 in the earlier Writ petitions, and even in the present Writ Petition; the petitioner has asserted, in his writ affidavit, that the order of cancellation was passed without putting him on notice; waiver of the right, to challenge the order of cancellation dated 26.03.2013, must be explicit and cannot be implied; an application, for compounding the offence, can be filed both before and after an order is passed cancelling the licence; the mere fact that the petitioner is charged of having committed offences, u/s 34(a) and Section 36(b) & (c) of the Act, does not disentitle him from seeking compounding of the offence u/s 31(1) (b) of the Act; on a conjoint reading of Section 47 of the Act r/ w. Rule 5 of the compounding Rules it is evident that the authority has no discretion but to compound the offence; the order of this Court in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, is not a binding precedent; the question, which arose for consideration in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, was whether the government could exercise power u/s 64 of the Act to restore the license on the acquittal of a licensee in a criminal case, long after the order of cancellation was confirmed in appeal and its validity was upheld by this Court; the observations made in the said judgment must be read in context, and not as a declaration of law on the scope of Section 47 of the Act; unlike in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, the

validity of the order dated 26.03.2013, whereby the petitioner's licence was cancelled, is under challenge in this Writ Petition; while the second limb of Section 47(1) can be invoked only before conviction in a criminal case as the executive cannot sit in judgment over the order passed by a competent criminal court, the first limb can be invoked even after the licence is cancelled as an executive order of cancellation of the licence, can be revoked by a subsequent executive order of compounding u/s 47; and this Court, in the exercise of its powers of judicial review, should set aside both the order dated 03.06.2013 whereby the petitioner's application for compounding the offence u/s 47 of the Act was rejected, and the order dated 26.03.2013 whereby his license was cancelled. Learned Senior Counsel would place reliance on *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, ; *Municipal Corporation of Delhi Vs. Gurnam Kaur*, ; *Krishena Kumar and Others Vs. Union of India and others*, ; *National Insurance Co. Ltd. Vs. Santro Devi and Others*, ; *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, ; *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, ; *Re Wier, Ex-parte Wier (1871) 6 Ch. App. 875* ; and *Southern Railway Officers Assn. and Another Vs. Union of India (UOI) and Others*,

13. On the other hand, Learned Government Pleader for Prohibition and Excise would submit that Rule 44 (1) of the Andhra Pradesh Excise (Grant of Licence of selling by shop and conditions of licence) Rules, 2012, (hereinafter called "shop Rules") authorises employment of servants and for grant of Nowkarnama in favour of certain persons; a Nowkarnama is an agent of the licensee; service of notice on the Nowkarnama amounts to service of notice on the licensee himself; the application made by the petitioner, seeking compounding of the offence, is an admission of guilt by him; while the petitioner preferred an appeal against the order of cancellation, the entire emphasis thereafter was only on compounding of the offence u/s 47 of the Act; the petitioner had, therefore, waived his right and is estopped from challenging the order of cancellation dated 26.03.2013; the use of the word "may" in Section 47 confers a discretion on the authority either to accept or to reject the request for compounding an offence; and, as Section 47 of the Act is applicable even to an order of suspension, failure on the part of the petitioner to challenge the order of suspension dated 15.03.2013 would disentitle him from seeking to have the offence, u/s 31(1)(b) of the Act, compounded.

I. SECTION 31(1) OF THE ACT: ITS SCOPE:

14. Section 31(1) of the Act confers power on the authority granting any licence or permit under the Act, subject to such restrictions as may be prescribed, to cancel or suspend the licence irrespective of the period to which the licence or permit relates, if clauses (a) to (e) thereunder are attracted. In the present case, the petitioner's licence was cancelled under clause (b) of Section 31(1) of the Act for breach of the conditions of the licence. While Section 31(1) confers power on the authority to suspend a licence as a measure of punishment, the authority

has also the inherent power to suspend a licence, during the pendency of proceedings for cancellation of the licence. (Tappers Co-operative Society, Maddur v. Superintendent of Excise, Mahaboobnagar 1984(2) APLJ page 1 (FB)). In the present case, the order of suspension dated 15.03.2013 was passed in the exercise of the inherent power during the pendency of cancellation proceedings, and not as a measurement of punishment u/s 31(1) of the Act. Failure to question the said order of suspension dated 15.03.2013 would not disentitle the petitioner from seeking to have the offence, u/s 31(1)(b) of the Act, compounded u/s 47 of the Act.

II. SERVICE OF NOTICE ON A NOWKARNAMA DOES NOT AMOUNT TO SERVICE OF NOTICE ON THE HOLDER OF THE LICENSE:

15. The proviso to Section 31(1) prohibits a licence or permit from being cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed. Section 2 of the Act does not define a "licence holder". However Rule 2(j) of the shop Rules defines a "licence" to mean a licence issued under the Rules and Rule 2(k) defines a "licensee" to mean the holder of such licence. The expression "holder of the licence" referred to in the proviso to Section 31(1) of the Act, in the absence of any definition under the Act, can only mean the "licensee" in view of Rule 2(k) of the Shop Rules. Rule 44 of the shop Rules relates to employment of servants and, sub-rule (1) thereof, prohibits appointment of any male person to sell IMFL and FL without the prior permission of the Prohibition and Excise Superintendent. Rule 44(1) requires every such person, before being employed in an A-4 shop, to obtain, from the Prohibition and Excise Superintendent, a Nowkarnama in Form N-1 on payment of a fee of Rs. 1,000/-. Rule 44(2) prohibits a Nowkarnama being granted to the persons mentioned in clauses (i) to (ix) thereof. Rule 44(3) stipulates that all illegal things done in connection with the transport, possession or sale of IMFL and FL, or known to have been done in contravention of the provisions of the Act or the Rules made thereunder, by the servants of the licensee, shall forthwith be reported to the Prohibition and Excise Superintendent by the licensee; and such orders, regarding continuance or otherwise of such servants in service, as may be issued by the Prohibition and Excise Superintendent shall be carried out by Licensee. Rule 44(4) requires every act of the authorized agent or servant to be deemed to be an act of the licensee. Neither the provisions of the Act nor the Rules made thereunder stipulate that service of notice on the Nowkarnama amounts to service of notice on the holder of the licence. A Nowkarnama is issued, under Rule 44 (1) of the Rules, only on persons employed by the licensee. Issuance of a Nowkarnama does not elevate such persons, who are merely the employees of the licensee, to the status of his agent. Service of notice on the Nowkarnama does not amount to service of notice on the holder of the licence and, in the absence of any notice being served on him, the petitioner, as the holder of the licence, cannot be said to have been given an opportunity of being heard as mandated by the proviso to Section 31(1) of the Act.

III. SECTION 47(1) OF THE ACT: ITS SCOPE:

16. Section 47 of the Act relates to compounding of an offence and, under sub-section (1) thereof, the Collector or any Prohibition and Excise Officer, specially empowered in that behalf, may accept from any person, (whose licence or permit is liable to be cancelled or suspended under clause (a) or clause (b) of sub-section (1) of Section 31 or who is reasonably suspected of having committed an offence falling under clause (b), clause (c), or clause (g) of Section 34; clause (a), clause (e) clause (f), clause (g) or clause (h) of Section 36; clause (b), clause (c) or clause (d) of Section 37; or Section 41), a sum of money not exceeding one lakh rupees and subject to such minima as may be prescribed, in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed as the case may be. u/s 47(2) in all cases in which any property has been seized, which is liable to confiscation under the Act, the same may be released on payment of the value thereof estimated by such an officer.

17. A criminal case has been instituted against the petitioner for the offences, u/s 34(a) and Section 36(b) & (c) of the Act, which are not among the offences compoundable u/s 47 of the Act. In so far as these offences are concerned, neither has the petitioner claimed nor is he entitled to have such offences compounded. An order of suspension or cancellation of licence, for violation of clauses (a) or (b) of Section 31(1), is compoundable, u/s 47(1) of the Act. In cases where a licence is either cancelled or suspended, in terms of clauses (c) to (e) of Section 31(1), the provisions of Section 47(1) are not attracted, and the licensee is not entitled to claim the benefit of having such offences compounded.

IV. COMPOUNDING OF THE OFFENCE PERMISSIBLE ONLY BEFORE CANCELLATION OF THE LICENSE/PRIOR TO CONVICTION IN A CRIMINAL CASE, AND NOT THEREAFTER:

18. In the case on hand, the petitioner was issued a show-cause notice why his licence should not be cancelled in terms of Section 31(1) (b) of the Act which provision finds reference in Section 47 of the Act. As noted hereinabove compounding of an offence, u/s 47(1) of the Act, is for a licence or permit "liable to be cancelled or suspended" u/s 31(1)(a) or (b) or where a person is "suspected" of having committed an offence u/s 34(b),(c),(g) or Section 36(e), (f), (g) & (h) etc. The Concise Oxford Dictionary of Current English (Eighth Edition) defines "liable to be" to mean "likely". Ordinarily, the word "liable" denotes: (1) "Legally subject or amenable to", (2) "Exposed or subject to or likely to suffer from (something prejudicial)", (3) "Subject to the possibility of (doing or undergoing something undesirable) (Shorter Oxford Dictionary). According to Webster's New World Dictionary also, the word "liable" denotes "something external which may befall us". The word "liable", occurring in many statutes, does not convey the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation or penalty.

19. (Superintendent and Remembrancer of Legal Affairs to Government of Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, Use of the words "liable to be cancelled or suspended" in Section 47 of the Act can only mean that an application for compounding has to be made prior to an order of suspension or cancellation being passed u/s 31(1) of the Act, and not thereafter.

V. NO WORD, USED IN A STATUTORY PROVISION, SHOULD BE IGNORED:

20. It is only in the absence of the words "liable to be", in Section 47(1) of the Act would the construction placed on Section 47(1) by Sri K. Ramakrishna Reddy, learned Senior Counsel, be the result as Section 47(1) would then have empowered the competent authority to accept from any person, "whose licence or permit is cancelled or suspended" under clause (a) or (b) of Section 31(1), a sum of money in lieu of such cancellation or suspension. The words used in Section 47(1) is "whose license or permit is liable to be cancelled or suspended" and not "whose license or permit is cancelled or suspended". Courts have adhered to the principle that effort should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute, as being inapposite surplusage, if they can have a proper application in circumstances conceivable within the contemplation of the statute. Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, , Manohar Lal Vs. Vinesh Anand and Others, When the legislative intent is found specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory. Bharathidasan University and Another Vs. All India Council for Technical Education and Others, Effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" must be avoided. Anwar Hasan Khan Vs. Mohammad Shafi and Others, Accepting the submission of Sri K. Ramakrishna Reddy, Learned Senior Counsel, that an application for compounding can be made even after an order of cancellation is passed would render the words "liable to be", used in Section 47(1) of the Act, redundant and inapposite surplusage.

VI. PROVISIONS OF THE ACT AND THE RULES MUST BE HARMONIOUSLY CONSTRUED:

21. A harmonious construction of a provision, which subserves the object and purpose for which the provision is intended to serve, is permissible provided it does not cause violence to the language of the provision. M/s. Oxford University Press etc. Vs. Commissioner of Income Tax, ; Administrator, Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another, Section 47(A) enables any person, who is "reasonably suspected" of having committed an offence falling u/s 38, to apply to Commissioner for compounding the offence before his conviction. A conjoint reading and a harmonious construction of Sections 47(1) and Section 47(A) make it amply clear that an application for compounding of the offence must, necessarily, be made before an order of

suspension or cancellation is passed or before the licensee is convicted of the offences specified in Section 47 and 47(A) of the Act, and not thereafter. This construction of Section 47 also finds echo in Rule 5(1) of the compounding Rules whereunder any person "accused" of a compoundable offence, who intends to get the case compounded, is entitled to apply in writing within 15 days of such "accusation" to the officer empowered under the Rules for compounding the offence. The right, to have an offence u/s 31(1)(a) & (b) compounded, is conferred by Rule 5(1) of the compounding Rules on a person who is "accused" of a compoundable offence and such a person is entitled to make an application in writing within 15 days of the "accusation". "The "accusation" stage can only be a stage anterior to the order of cancellation of the license or prior to the conviction for an offence, and not posterior thereto. It is thus evident that an application for compounding, u/s 31(1)(a) & (b) of the Act, can only be made before an order, of cancellation of the license, is passed and not thereafter. I find no reason, therefore, to differ from the law declared by this Court, in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, , that an application for compounding of an offence can only be made before the licence is cancelled or suspended u/s 31(1) of the Act.

VII. JUDGMENTS SHOULD NOT BE READ AS STATUTES:

22. The submission of the Learned Government Pleader that this Court, in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, had held that it is only for trivial offences that an offence can be compounded; the offences alleged against the petitioner are not trivial in nature; and the Commissioner was, therefore, justified in not compounding the offence; need only to be noted to be rejected. In K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, the learned Judge observed:

.... Indulging in loose sale of liquor is an offence u/s 36(c) of the Act as it is a contravention of the Rules. Section 36(c) of the Act is not a compoundable offence. Section 47 of the Act deals with compounding of offences. The reading of Section 47 of the Act goes to show that Section 36 (c) of the Act is not a compoundable offence. Therefore, the rules made u/s 47 of the Act for compounding of offence do not also provide for compounding of offences u/s 36 (c) of the Act. No doubt, where a licence or permit is liable to be cancelled or suspended under Clause (a) or clause (b) of sub-section (1) of Section 31 compoundable u/s 47(1) read with the schedule made in Rule 4 of Andhra Pradesh Excise (Compounding of offences) Rules 1973, but, once the licence is cancelled, there is no such power to compound the offence. Even in respect where the licence is liable to be cancelled or suspended for the offence u/s 36 (c) of the Act, the said offence cannot be compounded u/s 47(1) of the Act. Only in respect of trivial nature of the offences other than the offences u/s 36 (c) of the Act and where the criminal cases are registered for the breach of the terms and conditions of the licence u/s 31(1)(a) or (b) of the Act, then only such of those

violations/offences before the cancellation or suspension of the licences are liable for compounding, but not the offences against whom the criminal cases are registered u/s 36 (c) of the Act. Therefore, for this reason also, the licence of the fourth respondent cannot be restored...

(emphasis supplied).

23. Observations made in judgments must not be read out of context or interpreted as statutes. In *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, the Supreme Court held:-

.... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737 (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,...

In *HOME ER All v. 294 (2) 1970 Co., Yacht Dorset Office* *HOME ER All v. 294 (2) 1970 Co., Yacht Dorset Office*>Lord Reid said, "Lord Atkin's speech... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)*: (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board*: (1972) 2 WLR 537 Lord Morris said: (All ER p. 761c)

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it...

(emphasis supplied).

24. As noted hereinabove Section 36(c) is not among the offences compoundable u/s 47(1) the Act. All that the Learned Judge had observed, in K. Penchal Reddy Vs. Special Chief Secretary to Govt., Revenue (Excise-III) Dept., Govt. of A.P. and Others, is that an offence u/s 36[c] of the Act is not compoundable. It is in this context that the learned Judge observed that only trivial offences, other than an offence u/s 36[c] of the Act, are liable to be compounded. The Learned Judge was, evidently, of the view that the offences mentioned in Section 47(1) of the Act are trivial offences, and those not referred to therein are grave and serious offences which cannot be compounded. Section 31(1)(b) is among the offences specifically referred to in Section 47(1) of the Act and, as such, the person against whom action is initiated u/s 31(1)(b) is entitled to make an application for compounding the offence, before an order is passed cancelling his license.

VIII. MINIMUM FIFTEEN DAYS PERIOD NOTICE SHOULD BE GIVEN TO A LICENSEE BEFORE PASSING AN ORDER CANCELLING HIS LICENSE:

25. Neither the proviso to Section 31 of the Act nor the shop Rules prescribe a time frame for a notice to be given to the licensee to show cause why his license should not be cancelled, and for him to reply thereto. Where the relevant portion of the Act is ambiguous, recourse may be had to the Rules made under the Act and, if in the Rules any particular construction has been put on the Act, it is the duty of the Court to adopt and follow that construction. (Ex-parte Wier in re Wier (1871) 6 Ch. App. 875) Rule 5(1) of the Compounding Rules, confers a right on a person, accused of a compoundable offence, to apply in writing within 15 days of an "accusation". In the case on hand, a show-cause notice was issued on 15.03.2013 alleging that the petitioner had violated Section 31(1) (b) of the Act. The allegation, in the show-cause notice, is the "accusation" referred to in Rule 5(1) and, as the rule specifically stipulates that the person accused of a compoundable offence can make an application for compounding within 15 days from such "accusation", the said rule pre-supposes that a minimum period of 15 days notice should be given to the holder of a licence to show-cause against the proposed cancellation of his license in terms of Section 31(1)(b) of the Act. The

impugned order, cancelling the petitioner's license, was passed on 26.03.2013, 11 days after the date of the show-cause notice i.e., 15.03.2013, which is less than the 15 day period stipulated in Rule 5(1) of the compounding rules. As the petitioner has been denied his right to make an application, for compounding of the offence u/s 31(1)(b) of the Act within 15 days of the show-cause notice, the impugned order of cancellation must be held to be illegal. In his order dated 03.06.2013 the 2nd respondent referred to the possibility of loss of revenue and public health being jeopardized if the petitioner's application for compounding was to be accepted. Neither of these factors find mention in Section 47(1) of the Act. Such extraneous reasons are not only wholly irrelevant to the exercise of power u/s 47(1) of the Act, but would also render such exercise of discretion ultra vires Section 47(1) of the Act, arbitrary and illegal.

IX. WAIVER OF A RIGHT MUST BE INTENTIONAL AND EXPLICIT AND CANNOT BE IMPLIED:

26. The submission of the learned Government Pleader that the petitioner, by pursuing the remedy of compounding, has waived his right to question the order of cancellation also necessitates rejection. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege which, except for such a waiver, a party could have enjoyed. It is, in fact, an agreement not to assert a right. There can be no waiver unless the person, who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. AIR 1935 79 (Privy Council) , Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, , Madamsetty Satyanarayana Vs. G. Yelloji Rao and Others, , Associated Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh, Jaswant Singh Mathurasingh and another Vs. Ahmedabad Municipal Corporation and others, M/s. Sikkim Subba Associates Vs. State of Sikkim, ; Krishna Bahadur Vs. Purna Theatre and Others, ; State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., . In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel, and where there is no estoppel there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case, and the question of estoppel, waiver or abandonment would not be examined in the absence of a specific plea of waiver, acquiescence or estoppel, or even a plea of abandonment of right. State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., ; Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants' Association and Others, . Not only is there no voluntary or intentional relinquishment of a right but the petitioner has, on the other hand, continued to question the order of cancellation dated 26.03.2013 even in the present writ proceedings.

X. SUBMISSION OF AN APPLICATION, FOR COMPOUNDING THE OFFENCE, DOES NOT AMOUNT TO AN ADMISSION OF GUILT:

27. Learned Government Pleader would contend that, by filing an application for compounding the offence, the petitioner had admitted his guilt and, consequently, is not entitled to question the order of cancellation. An application, for compounding an offence, can only be made before an order of cancellation of the licence is passed u/s 31 (1) of the Act. Prior thereto the person, to whom a notice has been issued to show cause why his licence should not be cancelled, would be in no position to know whether or not the show cause notice would result in an order of cancellation being passed. It is at that stage that the licence holder exercises his option for compounding the offence. Neither Section 47 or any other provision of the Act nor the compounding Rules prohibit a licensee from simultaneously showing cause why his licence should not be cancelled and making an application, u/s 47 (1) of the Act, for compounding the offence. If an order, compounding the offence, is passed then, of course, the question of cancellation of the licence does not arise as Section 47 (2) of the Act deems acceptance of compensation to be an acquittal and, in such an event, no further proceedings can be taken against such a person or property with reference to the same Act. As composition of an offence is permissible u/s 47 (1) for the offence u/s 31 (1) (b) of the Act, and in view of Section 47(2) of the Act, the effect of composition would amount to an acquittal and, consequently, no stigma would attach to the character of such a person. *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, . The purpose of compounding an offence, on payment of the compounded amount, is to prevent litigation and to encourage early settlement of disputes. *Rajesh Kumar Sharma Vs. Union of India (UOI) and Others*, I am, therefore, unable to accept the submission of the learned Government Pleader that an application, for compounding an offence, is a tacit admission of guilt by the licence holder.

XI. NO DISCRETION IS CONFERRED ON THE COMPETENT AUTHORITY TO REJECT AN APPLICATION ON THE CONDITIONS STIPULATED IN SECTION 47(1) AND THE RULES BEING SATISFIED:

28. Learned Government Pleader would submit that the use of the word "may" in Section 47 (1) of the Act must be construed as conferring a discretion on the competent authority either to grant or refuse to accord permission for compounding of an offence. The words used in Section 47(1) are "may accept" and not "may refuse". The word "may" cannot be divorced from the word "accept". *Exposition ex visceribus actus* is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are, therefore, not to be construed in isolation. For instance, the use of the word "may" would normally indicate that the provision is not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, "of an ineffectual angel beating its wings in a luminous void in vain". If the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to

futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, ; Nokes v. Doncaster Amalgamated Collieries, Ltd. [1940] AC 1014). It is evident from the use of the words "may accept", in Section 47(1) of the Act, that no discretion is conferred on the competent authority to refuse to compound an offence u/s 31 (1) (b) of the Act if an application in this regard is submitted before a license is cancelled, and the conditions stipulated in the said Section and under the compounding Rules are satisfied. The discretion, conferred on the authority u/s 47(1) of the Act is limited to the prescription of the fee payable for compounding the offence. Rule-4 of the compounding Rules stipulates that no offence specified in column (2) of the Schedule shall be compounded for an amount less than the amount specified in column (4) thereof. While the schedule, to the compounding Rules, prescribes the minimum compounding fee payable for various offences including the offence u/s 31(1)(b) of the Act, the maximum compounding fee, as is stipulated in Section 47 (1) of the Act, is Rs. 1,00,000/-. The limited discretion available to the competent authority is to direct payment of a compounding fee, between the minimum prescribed in the schedule to the compounding Rules and the maximum prescribed under 47(1) of the Act, for compounding the offence u/s 31(1)(b) of the Act. A limited discretion is not to be exercised whimsically, but judicially, in a manner which will not emasculate these provisions or debilitate their potency as an instrument for suppressing the mischief which the Legislature had in view. Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, .

29. The order of the 2nd respondent dated 03.06.2013, rejecting the petitioner's request for compounding the offence, is therefore set aside. As the order of cancellation dated 26.03.2013 is also being set aside for failure to provide a reasonable opportunity of being heard to the licensee, and as the show cause notice dated 15.03.2013, (a copy of which is made available to the petitioner), would revive thereby, the petitioner would now have the opportunity of not only submitting his reply to the show cause notice but also to make an application afresh for compounding the offence u/s 31(1)(b) of the Act.

30. Sri K. Ramakrishna Reddy, learned Senior Counsel, would submit that the petitioner would furnish his reply to the show cause notice, and simultaneously make an application for compounding the offence, within three days from today. In case such applications are filed the 2nd respondent-Commissioner shall pass orders, on the application for compounding in accordance with law and in the light of the observations made hereinabove, within one week from the date of receipt of a copy of this order. The 5th respondent shall also pass orders, in accordance with law, on the petitioner's reply to the show cause notice at the earliest. It is made clear that, since the petitioner has also been charged of having committed the offences u/s 34(a) and Section 36(b) & (c) of the Act, which are not compoundable u/s 47(1) of the Act, the criminal proceedings

instituted against the petitioner for such offences shall continue, and be decided in accordance with law uninfluenced by any observations made in this order.

31. Before parting with the case, this Court must note the assertions made on oath by the petitioner in his affidavit dated 27.08.2013 which, if true, is of grave concern. The petitioner asserts that the 5th respondent and other officials i.e., the Additional Commissioner, Deputy Commissioner and Joint Commissioner, while requesting him to withdraw all proceedings pending before this Court, i.e., the present Writ Petition and C.C. Nos. 1010 and 1151 of 2013, had assured him that appropriate orders, for renewal of his license, would be obtained from the Government and the said orders would be implemented; they had also requested a similarly situated person, who had earlier filed W.P. No. 18414 of 2013, to withdraw the said Writ Petition to renew his license; the Government had, thereafter, issued memo dated 01.08.2013 permitting the petitioner in W.P. No. 18414 of 2013 to run the shop; and, since he did not agree to withdraw the writ petition and the Contempt Cases, a vacate stay petition was filed and he was denied the benefit which the petitioner in W.P. No. 18414 of 2013 was extended.

32. The documents, placed before this Court by the petitioner, show that after an interim order was passed in this Writ Petition, (i.e., in W.P.M.P. No. 21085 of 2013 in W.P. No. 17358 of 2013 dated 19.06.2013), the petitioner in W.P. No. 18184 of 2013 filed W.P.M.P. No. 22178 of 2013 in W.P. No. 18184 of 2013 and this Court by its order dated 26.06.2013, while referring to the interim order passed in this Writ Petition (order in W.P.M.P. No. 21085 of 2013 in W.P. No. 17358 of 2013 dated 19.06.2013), passed a similar interim order in W.P.M.P. No. 22178 of 2013 in W.P. No. 18184 of 2013 dated 26.06.2013. The petitioner, in W.P. No. 18184 of 2013, appears to have submitted a representation thereafter to the Hon"ble Minister for Prohibition & Excise requesting him to consider his request and compound the offence to enable him to run the shop stating that he had paid the compounding fee of Rs. 1,00,000/-. On such a request being favourably recommended to him by a Member of the Legislative Assembly, vide letter dated 25.07.2013, the Hon"ble Minister for Prohibition & Excise made an endorsement, on the said letter of the MLA, directing the 1st respondent to stay the order of the Commissioner of Prohibition & Excise and, in the meanwhile, renew the A-4 shop and circulate the records.

33. While the submission of Sri K. Ramakrishna Reddy, Learned Senior Counsel, that it is only because of the recommendation of a local MLA that the Hon"ble Minister had intervened, cannot be brushed aside, these are all matters which necessitate an in-dept examination after the respondents are heard in this regard. These assertions, if true, do not show the authorities, and officials of the State Excise Department, in good light. If, as contended by the petitioner, he was asked to withdraw the Writ Petition and the contempt cases as a precondition for favourable orders being passed in his favour, it may also amount to interference with the course of administration of justice necessitating action being taken under the Contempt of Courts Act. As both the orders of cancellation of license

dated 26.03.2013, and the order of the Commissioner of Prohibition & Excise dated 03.06.2013, are being set aside, suffice it to leave it open to the petitioner to avail his legal remedies against the authorities and officials concerned for their alleged acts of interfering with the course of administration of justice. The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.